A New Dawn for Fintech in Africa: Consideration for the Fintech Annex of the Protocol on Digital Trade

By:

Albert Puja
Vivienne Lawack

May 20, 2024

African countries, under the umbrella of the African Continental Free Trade Area (AfCFTA), recently made a significant leap forward in digital trade integration with the adoption of the Protocol on Digital Trade. Among other notable provisions, the Protocol encourages cooperation and prescribes commitments by AfCFTA members in the area of financial technology (Fintech). In particular, from the draft version of the adopted Protocol that is available to the public, AfCFTA members are required to:

- Promote collaboration between their Fintech enterprises and industry bodies,

- Encourage their Fintech enterprises to use facilities and assistance in other member states to explore business opportunities,

- Cooperate to improve opportunities for African Fintech enterprises,

- Promote the development of Fintech solutions for business and financial sectors, and

- Adopt relevant regional, continental, and international standards for Fintech.

It should not be mistaken that this is the first time a regional agreement within the continent is promoting cooperation in the areas of technology and finance. Many such agreements, like the Southern African Development Community's (SADC) Protocol on Finance and Investment (SADC PFI), already exist within the various regional blocs on the continent. In particular, the SADC PFI provides the legal backing for implementing the SADC Real-time Gross Settlement (RTGS) system, which is an automated interbank settlement system that settles payment obligations between participating banks in SADC in real time or on a delayed basis.

However, what makes the AfCFTA's Protocol on Digital Trade unique and special is that it is possibly the only time that the word 'financial technology' is specifically used in such regional agreements. Understandably, this is the case because the Fintech concept is more popular now than when previous technology or finance-focused regional agreements were concluded. Notably, the Protocol on Digital Trade requires that a specific Annex on Fintech (Fintech Annex) should be developed. Recent reports from the AfCFTA Secretariat suggest that the key elements of the text of the Fintech Annex and other Annexes prescribed by the Protocol are already being deliberated.

As AfCFTA members deliberate on the Fintech Annex, several issues should steer and guide their discussions. With this in mind, the aim of this piece is to highlight some — not all — of these issues and offer general considerations for engaging with them.

Where to begin?

A foundational question that needs to be answered is whether AfCFTA members should develop the Fintech Annex from scratch or build on existing frameworks. Building on existing frameworks is not new to the AfCFTA legal regime. Notably, the World Trade Organisation's (WTO) Understanding on Dispute Settlement (DSU) was substantially adopted, or as some would say, copied, for the AfCFTA's Protocol on Rules and Procedures on the Settlement of Disputes.

Commentators have been divided on whether this adoption of the WTO's DSU was a good move or not. Some have argued against it, while others have argued in favour of it. Some have also taken a middle position to suggest that existing frameworks should have been adopted, but in a way that reflects African peculiarities and realities. This middle stance is also suggested for the Fintech Annex. Essentially, it is suggested that the Fintech Annex should draw on certain international policy documents on Fintech. The Digital Trade Protocol itself does not appear to be against such an approach, especially as it encourages AfCFTA members to adopt relevant regional, continental, and international standards for Fintech. However, the Fintech Annex must also reflect and accommodate the unique characteristics, realities, and needs of the African Fintech market.

In aiming to 'Africanise' the Fintech Annex, it is observed that discussions on Fintech in the African context centre around several objectives and challenges. Notably, there is a significant focus on financial inclusion, specifically on how Fintech can help bridge gaps in access to financial services, while also addressing challenges of digital financial exclusion and literacy. Further, there are concerns around access to finance for budding Fintech enterprises, as well as instituting certain infrastructure that enables consumers to access Fintech-enabled financial services, such as data and electricity. Another key consideration is how to develop balanced regulatory regimes that not only encourage innovation and competition in the financial sector, but also ensure the financial integrity and stability of the sector. Additionally, there is an emphasis on capacity building for regulatory authorities and ensuring that they have the necessary resources to fulfill their regulatory duties on Fintech effectively.

The Bali Fintech Agenda, launched in 2018, is one of the key international policy documents on Fintech from which lessons can be drawn in developing the Fintech Annex. In it, the International Monetary Fund and the World Bank Group identify 12 policy elements that should guide national regulatory authorities and policymakers in their efforts to unlock the opportunities of Fintech and mitigate the risks associated with it. Summarily, these elements revolve around countries: (1) embracing the potential of Fintech; (2) enabling technological advancements to improve financial services; (3) reinforcing open and competitive markets; (4) promoting Fintech for financial inclusion and market development; (5) closely monitoring evolving financial systems; (6) adapting regulatory and supervisory frameworks for financial stability; (7) protecting the integrity of financial systems; (8) modernising legal frameworks to support Fintech activities; (9) ensuring stability in monetary and financial systems; (10) developing strong financial and data infrastructures; (11) encouraging international cooperation and sharing information; and (12) enhancing global monitoring of monetary and financial stability.

The Sochi Accord on Inclusive Fintech is another important international policy document on Fintech. First issued and adopted in 2018, and updated in 2022 by members of the Alliance for Financial Inclusion (AFI), the Accord highlights Fintech's role in enhancing financial inclusion by expanding access to financial services on a large scale, and by making these services more affordable and efficient. However, the Accord also points out that leveraging Fintech to drive financial inclusion introduces new regulatory challenges, including issues related to consumer protection, cybersecurity, data privacy, and money laundering. To address these challenges, the Accord tasks AFI members to do the following: (1) lead in Fintech development; (2) showcase its benefits for inclusion; (3) enhance institutional capacities; (4) establish dialogue platforms; (5) prioritise financial inclusion in digital currency projects; (6) foster regulatory innovation; (7) improve regulatory frameworks; (8) use Fintech to overcome gender barriers; and (9) strengthen data protection and privacy.

Apart from the Bali Fintech Agenda and Sochi Accord, there are other resources from other international standards-setting bodies like the Financial Stability Board (FSB), and Bank for International Settlements (BIS), from which lessons can be drawn in crafting the Fintech Annex. Lessons can also be drawn from some national Fintech policies that some countries within the continent, like

Nigeria and Egypt, have developed and adopted for driving the growth of their Fintech market.

Text of the Fintech Annex

Now, to what the Annex will actually capture. Structurally, drawing from other AfCFTA Annexes that have already been finalised, the Annex will expectedly have at least three key sections: a preamble that outlines the objectives and underlying principles of the Annex, a definition section that clarifies certain key terms used in the document, and lastly, substantive provisions that specify what AfCFTA members are required to do in terms of commitments, obligations, and implementation strategies on Fintech.

- **The preamble**

In addition to recognising the provisions of the Protocol on Digital Trade that justify the development of the Fintech Annex, it is crucial that the preamble outlines some overarching objectives for Fintech. Similar to the international Fintech policy frameworks referenced earlier, these objectives should address unlocking the opportunities of Fintech and mitigating associated risks. Some objectives that balance these issues include enhancing financial inclusion, promoting innovation and competition, ensuring consumer protection, strengthening cybersecurity and data protection, managing possible vulnerabilities and exclusions, ensuring financial integrity and stability, facilitating cross-border Fintech initiatives, and generally ensuring sustainability in the adoption of Fintech. The objectives specified in the Fintech Annex are particularly important because, from a purposive interpretation perspective, they provide a framework for expanding or clarifying more specific or ambiguous provisions of the Annex.

The definitions

Key terms used in the Fintech Annex will need to be defined. Importantly, the following three key terms that have been used repeatedly in the Protocol on Digital Trade with respect to its provisions on Fintech will need to be clarified in the Annex: (1) Fintech, (2) Fintech enterprises, and (3) African Fintech enterprises. Some considerations for defining these concepts are briefly

discussed.

First, with regard to ‘Fintech’, it is acknowledged that the term has been defined in different ways by various authors. Definitions range from viewing Fintech as a technology, a company, an idea, an innovation, to an industry or sector. However, it appears that some of these characterisations of Fintech better describe components of Fintech rather than capturing the broader concept itself. It is suggested that an ‘effect-based’ approach, that views the likely impacts of Fintech in the financial sector, better captures the broader concept. In this respect, it is noted that innovation and disruption are two key effects that Fintech can have in the financial sector.

These elements of innovation and disruption are integral to **the definition by the Financial Stability Board (FSB)** that Fintech is: technologically enabled innovation in financial services that could result in new business models, applications, processes, or products with an associated material effect on financial markets and institutions and the provision of financial services. This definition by the FSB is among the most widely referenced in the literature. Its influence is also evident in its adoption in key documents such as the Bali Fintech Agenda and the Central Bank of Egypt’s Fintech and Innovation Strategy. As such, the FSB’s definition is highly recommended for consideration by stakeholders in developing a definition for ‘Fintech’ in the Fintech Annex.

Secondly, in relation to ‘Fintech enterprise’, it is observed that there is a tendency to categorise Fintech firms very narrowly to mean only Fintech startups. However, it is suggested that Fintech enterprises are better described in terms of all firms that are using digital technologies to innovate and disrupt financial services. With such an approach, Fintech enterprises will accommodate not only Fintech startups but also big technology companies (Bigtechs), and incumbent financial institutions. Also, Fintech enterprises should be defined to include technology companies who do not necessarily offer financial services but provide the technology and support that drives the provision of financial services by Fintech startups, Bigtechs, and incumbent financial institutions.

Finally, as it relates to ‘African Fintech enterprises’, questions arise regarding whether the definition of the term should extend beyond physical and

operational presence in an African country to also include ownership structures. This issue is particularly relevant because some of the Fintech unicorns in Africa have ownership traced back to entities outside of the continent. While it is suggested that physical and operational presence may be the key criterion, the Annex should also require AfCFTA members to implement measures that specifically support indigenous Fintech enterprises. This will help ensure that the benefits of digital financial growth are retained within local economies and contribute to regional development.

- **What countries need to do**

As highlighted earlier, the Protocol on Digital Trade highlights areas of cooperation and commitments of AfCFTA member countries on Fintech. However, these issues are captured very broadly, and it is up to the Fintech Annex to outline the specifics of dealing with them. Particularly, there are numerous specific initiatives that AfCFTA members may be required to establish under the Annex. These initiatives will not only support the growth of their domestic Fintech markets but will also simplify cross-border Fintech cooperation on the continent.

To start with, for AfCFTA member countries to facilitate collaboration between their Fintech enterprises and industry bodies, it will be useful for them to promote the establishment of: (1) national Fintech associations, which provide platforms for collaboration among different stakeholders of the Fintech ecosystem, and (2) regulatory coordination bodies for Fintech, which should facilitate communication and collaboration between different regulatory authorities to ensure a coherent and coordinated regulatory approach to Fintech. Specifically, national Fintech associations such as the Fintech Association of Nigeria and Fintech regulatory coordination bodies like South Africa's Intergovernmental Fintech Working Group can act as centralised points of engagement between Fintech enterprises and regulators of different African countries.

Further, for AfCFTA members to improve opportunities for African Fintech enterprises, they need to implement what have been referred to as 'Fintech policy enablers' within their respective jurisdictions. These policy enablers are

government initiatives that facilitate the sustainable development of Fintech-enabled financial services and the adoption of digital technologies. These measures have been identified to include implementing:

- A national broadband network that allows for greater internet connectivity;
- Digital identities and authentication systems;
- Interoperability of critically important networks and platforms, such as telecommunications and banking systems;
- Data protection laws that allocate rights and responsibilities for processing the personal data of consumers;
- Cybersecurity strategies and laws that facilitate public and private institutions in mitigating cyberattacks.

Other policy measures include the adoption of open banking and the establishing innovation facilitators such as innovation hubs, regulatory sandboxes, and innovation accelerators. Additionally, for AfCFTA member countries to facilitate market entry for both their domestic enterprises and investors from other African countries, it may be necessary for them to establish Fintech one-stop shops. These shops provide a single point of contact with various regulatory bodies for Fintech enterprises dealing with business registration, licensing, regulatory guidance, and access to support networks.

- **Oversight mechanisms**

To ensure that there is oversight in achieving the objectives of the Fintech Annex, it may also be useful to establish an institutional mechanism for the Annex. It is suggested that a dedicated Fintech Committee should be established to oversee the implementation of the Fintech Annex, monitor the

progress of Fintech developments within member states, and facilitate the exchange of best practices and experiences among AfCFTA members.

Conclusion

The inclusion of Fintech in the Protocol on Digital Trade and the requirement to develop the Fintech Annex represent a significant milestone for Fintech on the continent. Documents like the Fintech Annex take time to develop and are not revised as frequently as domestic frameworks. Therefore, it is crucial that stakeholders involved in negotiating the Fintech Annex strive to produce a document that will stand the test of time and facilitate measurable results. This piece has attempted to highlight some key considerations for developing the Fintech Annex. However, what has been covered is merely the tip of the iceberg. There are many other issues to consider. Experts and scholars in the field of Fintech are encouraged to urgently publish on this topic to support the efforts of the actual negotiators of the Fintech Annex. The AfCFTA Secretariat should also continue its consultative engagement on the various annexes for the Protocol on Digital Trade to ensure that the final annexes fairly reflect the interests and views of key stakeholders. In all, it is hoped that a concerted effort to produce a sound Fintech Annex and implement it will bode well for the continent’s financial services landscape.

View online: A New Dawn for Fintech in Africa: Consideration for the Fintech Annex of the Protocol on Digital Trade

Provided by Afronomicslaw